IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 17TH AUGUST 2007 / 26TH SRAVANA 1929

Crl.MC.No. 2244 of 2007()

CC.2299/2006 of JUDL.MAGISTRATE OF FIRST CLASS-I, KOLLAM
CC.NO.1902/03 OF JFCM COURT-I, KOLLAM.
CRIME NO.416/03 OF KUNDARA POLICE STATION

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PETITIONER: 2ND ACCUSED

ANILKUMAR, S/O.STANLAVOS,
VALIYAVILAKIZHAKKATHIL,
VELLIMON, CHERUMOODU, PERINADU VILLAGE.

BY ADV. SRI.C.RAJENDRAN

RESPONDENTS: STATE AND THE DE-FACTO COMPLAINANT

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1. THE STATE OF KERALA, REPRESENTED BY
THE SUB INSPECTOR OF POLICE,
KUNDARA POLICE STATION, THROUGH THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. CHERUSUNAM, D/O.SARAMMA,
HOUSE NO.151, VELLIMON,
CHERUMOODU, PERINADU VILLAGE.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 17/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

Crl.M.C. No.2244 OF 2007

Dated this the 17th day of August, 2007

ORDER

The petitioner is the 2nd accused in a prosecution for offences punishable, inter alia, under Sec.452 of the IPC. Investigation was complete. Final report was filed. Cognizance was taken by the learned Magistrate. The petitioner appeared before the learned Magistrate and he was enlarged on bail. The petitioner was not available before the learned Magistrate and, in these circumstances, on 21/3/06 the case against the petitioner was split up and charges were framed against other accused. The other accused faced trial. They have been found not guilty and acquitted. The case against the petitioner was split up. The petitioner has now come before this Court complaining that he has not been acquitted. According to the learned counsel for the petitioner, the petitioner was represented throughout the trial and, in

these circumstances, the court below erred in not acquitting the petitioner/accused.

2. A report of the learned Magistrate was called for. The report shows that on 21/3/06 as the petitioner was absent, the case against him was split up and the trial proceeded only against the co-accused. A number was assigned to the split up case as against the petitioner only on 5/10/06 when the judgment of acquittal in favour of the other accused was pronounced. But that cannot, in any way, alter the situation in so far as the case against the petitioner is concerned.

3. The petitioner must now appear before the learned Magistrate and seek regular bail. The proceedings against him will have to continue from the stage at which it was when he started not appearing before the learned Magistrate. The learned counsel for the petitioner submits that the petitioner apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with and expeditiously. His absence was not wilful; but was due to reasons beyond his control. He is employed in the Armed Forces and that is the reason why he could not appear before the

learned Magistrate, submits the learned counsel for the petitioner.

4. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the petitioner's application for regular bail on merits in accordance with law and expeditiously. No special or specific directions appear to be necessary. Every court must do the same. Sufficient general directions on this aspect have already been issued in the decision reported in **Alice George v. Deputy Superintendent of Police** (2003 (1) KLT 339).

5. In the result, this Crl.M.C. is dismissed; but with the observation that if the petitioner surrenders before the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself.

6. The learned counsel for the petitioner submits that the

petitioner is employed in the Armed Forces and that is the reason why he could not appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider this circumstance when it is urged before the learned Magistrate. The learned Magistrate must consider that circumstance.

Sd/-
(R. BASANT, JUDGE)

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P.S. to Judge